IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.277 OF 1995

Prakash Ramchandra Dhane ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr.S.V.Kotwal along with Mr.M.S.Mohite for the applicant
Mr.R.Y.Mirza,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 15,2005

ORAL JUDGMENT:

1. The Revision Application is preferred by the Applicant-accused. The Applicant-accused has been convicted for the offences punishable under Sections 409, 467, 471 and 477A of Indian Penal Code and is acquitted of the offences punishable under Sections 435 and 201 of the Indian Penal Code. The question which is raised by the learned Counsel for the Applicant in this Revision Application is whether the learned trial Judge could have taken a recourse to the provisions of Section 73 of the Indian Evidence Act, 1872 (hereinafter referred to as the Evidence Act) when the evidence of hand writing expert was not adduced by the prosecution.

2. With a view to appreciate the submissions made by the learned Counsel for the parties, it will be necessary to refer to the facts of the case in brief. The case of the prosecution is that the Applicant was working as a Junior Clerk in a Bank. The complainant is the manager of the said Bank. The incident relates to the period between 1st August

1981 to 10th December 1981. In the year 1981, apart from the Head Office at Satara there were three branches of the said Bank. In the head office at Satara, there were two sections one dealing with the administrative matters and the other was dealing with day to day banking transactions. In the banking sections there were three departments. One was dealing with receiving the deposits from the depositors. The other was dealing with the return of the deposits and the third department was dealing with the matters of advancing loan. The case of the prosecution is that the Applicant was at the relevant time posted as a Clerk in Banking section. According to the prosecution, the duty of the Applicant was to fill up the forms of the depositors when the depositors used to come to the bank for depositing amounts, to obtain their specimen signatures and to pass challans submitted by the depositors for withdrawal of the amount. His duty related to writing of necessary accounts in the deposit section. According to the case of the prosecution duty of the Applicant was to fill up the withdrawal slip/challan of the members to enable them to withdraw the requisite amounts. His duty was to make necessary endorsement on the withdrawal slips and then to forward the slip to the superior officer for necessary sanction. The case of the prosecution is that when the superior officer used to be on leave the Applicant used to take the charge of his duty as an Assistant Accountant.

3. On 8th December 1981 there was a fire at the counter No.5

where the Applicant was working. The allegation is that the Applicant was responsible for the fire. The Applicant was prosecuted for the offence of causing mischief by fire and causing damage to the bank property. The Applicant was acquitted by the Sessions Court.

4. The case of the prosecution is that the report of the auditor of the said bank revealed that there was misappropriation made by the Applicant to the tune of Rs.14,000/- during period from 1st August 1981 to 10th December 1981. The allegation of the prosecution is that there was one saving account in the name of Bhimrao Mane. It was noticed by the auditor that certain pages of the Ledger account were vertically torn and half portion of the torn sheets were not available. It is alleged that a sum of Rs.3,200/- is shown to have been deposited in the account of said Bhimrao Mane. On the same day, by a withdrawal slip an amount of Rs.3,000/- was withdrawn. It is alleged that no deposit voucher in the sum of Rs.3,200/- was found on the record of the bank. It is alleged that bogus entry of deposit was made by the Applicant and a sum of Rs.3,000/- was withdrawn by the Applicant with the help of withdrawal slip which was allegedly forged. The withdrawal slip shows that the amount was withdrawn by one Vasant Baburao Dhane. The said withdrawal slip is at Exh.45. It is alleged that the said slip is signed by the Applicant also in the capacity as the Assistant Accountant as one Raghunath Dhanawade who was

working as Assistant Accountant was not present in the bank. The second allegation is regarding bogus account standing in the name of one Pratap Pawar. The allegation is that a fictitious account was opened in the name of Pratap Pawar in a separate Ledger Book at page No.117. A sum of Rs.4,500/- was shown to have withdrawn from the said account by a withdrawal slip. The withdrawal slip discloses the name of one Sanjay Narayan Pawar who is a non-existing person. The allegation is that the withdrawal slip is in hand writing of the Applicant. The said withdrawal slip is at Exh.50. It is alleged that from the said account a sum of Rs.5,000/- shown to have been withdrawn on the basis of one withdrawal slip by payee Smt.Kusum Sambhaji Pawar. It is alleged that the said withdrawal slip was also forged by the Applicant and was signed by him which is at Exh.53. The last allegation is as regards the account in Ledger book at page No.113 in the name of one Pratap Pawar. The allegation is that in the ledger book of the said account, fictitious balance was shown. A sum of Rs.2320/- was shown to have been deposited though there was no actual deposit. The allegation is that with the help of fabricated withdrawal slip a sum of Rs.1500/- was withdrawn by the Applicant in the name of one Vasant. It is alleged that the said Vasant is a non-existing person. It is alleged that the withdrawal slip is in the hand writing of the Applicant and bears his signature. The said withdrawal slip has been marked as Exh.57.

5. The learned Chief Judicial Magistrate convicted the applicant for the offence under Sections 409, 477A, 467, and 471 of the Indian Penal Code (hereinafter referred to as IPC). However, the Applicant was acquitted of the offence under Sections 435 and 201 of I.P.C. It appears that the Applicant denied his signatures on the said withdrawal slips at Exh.45, Exh.50, Exh.53 and 57. The prosecution examined Shri Sadashiv Shelar who is the complainant, Bhimrao Mane, Pratap Pawar, Jivandas Shah, Sunil Hole, Vasant Pawar, Raghunath Dhanawade as prosecution witnesses. The Applicant has examined one Prakash R. Dhane as a Defence Witness. The conviction and sentence of the Applicant was confirmed by the learned Additional Sessions Judge in an Appeal preferred by the Applicant. In the present Revision Application the challenge is to the conviction and sentence of the Applicant.

6. The scope of the Revision Application is limited in the sense that it is not permissible for this Court to re-appreciate the evidence. This Court can interfere only if there is a manifest illegality or gross procedural irregularity is committed by the Courts below. It will be, therefore, necessary to refer to the findings which are recorded by the Courts below. The main contention which was raised on behalf of the Applicant before the Courts below appears tobe that the prosecution has not obtained opinion of the handwriting expert as regards disputed handwriting of the Applicant and disputed signatures of the Applicant on the

withdrawal slips which are at Exh.45,50,53 and 57. The learned Chief Judicial Magistrate did an exercise of comparing the alleged signatures of the Applicant on the said documents with the admitted signatures of the Applicant and recorded a finding that the Applicant has withdrawn a sum of Rs.14,000/- on the basis of said four withdrawal slips. The learned Magistrate held that though the disputed documents were not sent to a handwriting expert, he had a power under Section 73 of the Indian Evidence Act to compare the disputed handwriting with the admitted hand writing and to record a finding. The learned Chief Judicial Magistrate also recorded a finding that there was no alternative but to accept that the amounts must have been received by the accused and not by anybody else.

7. In so far as Appellate Court is concerned, a finding was recorded on the basis of comparison of the handwriting on the alleged forged documents with the admitted handwriting of the Applicant. The learned Additional Sessions Judge also noted that the auditor has recorded that defalcated amount has been deposited by someone with the bank and name of the person who deposited the amount is not known. The learned Judge held that considering the evidence on record the signature on the deposit challans and on withdrawal slips were of the Applicant.

8. The learned Counsel for the Applicant submitted that in absence of any opinion of handwriting expert produced by the

prosecution, it was unsafe to invoke section 73 of the Indian Evidence Act and to record a finding of guilt only on the basis of visual comparison of the handwriting by the learned Trial Judge. He submitted that by relying upon the various decisions of this Court and Apex court that a manifest illegality is committed by the Courts below by holding that the withdrawal challans bear the signatures of the Applicant. He pointed out that another serious lacuna in the case of the prosecution is that the Cashier who had actually paid the amounts has not been examined. He submitted that the charge framed was very vague and it was not stated in the charge as to which documents are forged by the Applicant.

9. The learned A.P.P. submitted that on the basis of the evidence on record that the Courts below have come to the conclusion that the documents in question could not have been signed by anyone else save and except the Applicant. He submitted that concurrent findings are recorded by the Courts below against the Applicant and it was not open for this Court to re-appreciate the evidence and to interfere with the concurrent findings in a Revision Application.

10. I have considered the submissions of the Advocates appearing for the parties. It must be noted here that the Applicant was tried by the Sessions Court for committing mischief in the bank by setting the record on fire and has been acquitted. Moreover, in the present case the learned

Trial Judge acquitted the Applicant of the offence under section 435 and 201 of the IPC. The Appellate Court has rightly noted that the entire case revolves around the question whether the four withdrawal slips at exh.45,50,53 and 57 are in the handwriting of the Applicant. It will be necessary to refer in detail the findings recorded by the Appellate Court. The said findings can be summarised as under:

i) The evidence of Witness shows that the signature on back side of Exh.45 is of the Applicant.

ii) It is not known whether really the rest of the contents of Exh.45 including the signature of the payee was in the handwriting of the Applicant or not as the Investigating Officer has not taken any efforts to collect specific handwriting of the Applicant and to send it to the handwriting expert.

iii) The contents of the Exh.45 were not written by the Applicant in presence of the bank officials and it is difficult to believe that the contents are in the handwriting of the Applicant.

iv) On comparison of many signatures of the Applicant on record, it can be said that the signature on exh.45 of Assistant Accountant is that of the Applicant.

v) Opinion of the handwriting expert could have been an additional piece of evidence but the absence of such evidence is not a deficiency in the prosecution case.

vi) There was no evidence to show that withdrawal challan at Exh.45 was tendered by the applicant himself to the Cashier and the Cashier paid the sum of Rs.3000/- to the Applicant. The Cashier has not been examined. Therefore, it is not established that the Applicant has taken a sum of Rs.3000/- on the basis of Exh.45.

vii) The Applicant has cleared Exh.45 and therefore it is the Applicant who is responsible for loss of Rs.3000/- as he has not compared the signature of the account holder and has not checked the balance.

viii) The Applicant approved withdrawal of amounts on the basis of challans at Exh.50 and 53. Both the challans bear signature of the Applicant in his capacity as a Clerk and Raghunath Dhanawade has signed the said documents as Assistant Accountant.

ix) Applying the same test applied to document at exh.45, conclusion can be drawn that Exh.50 and 53 are signed by the Applicant. However, there was no evidence to show that except for signature, the remaining part of the exh.50 and 53 is in

the handwriting of the Applicant.

x) As Cashier is not examined, the receipt of the amount of Rs.4500/- and Rs.5000/- by the Applicant is not proved.

xi) The Applicant deliberately cleared the slips at exh.50 and 53 though the same were defective and the said slips were blindly cleared by the Assistant Accountant Mr.Dhanawade who is a prosecution witness. As the said Dhanawade was am accomplice, his evidence cannot be accepted without sufficient corroboration.

xii) Placing reliance on a carbon copy of the Charge Yadi Exh.59 and 60, it was held that on 7th November 1981 the Applicant was working as a Clerk as well as Assistant Accountant.

xiii) It was held that account No.117 in the name of Pratap was a bogus account.

xiv) The Investigating Officer was not alert and he did not obtain opinion of the handwriting expert and therefore except for signature on Exh.57 remaining part of the Exh.57 is not established to be in the handwriting of the Applicant.

11. Thus, the sum and substance of the finding recorded by the Appellate Court is that some of the signatures on the said

four documents are of the Applicant. However, as the Cashier is not examined, it is not established that the Applicant has himself taken the amounts under the said withdrawal slips. The Appellate Court accepted that the signatures appearing on the said four documents were of the Applicant by invoking Section 73 of the Evidence Act.

12. It must be noted that P.W.No.1 Sadashiv Shelar stated that the signature at exh.45 appears to be that of the Applicant. As regards the signatures on the other three relevant documents, he has stated that the signatures are that of the Applicant. In so far as the prosecution witness Raghunath Dhanawade is concerned, the Appellate Court itself has come to the conclusion that his evidence will have to be treated on par with the evidence of an accomplice. The Applicant has examined defence witness Mr.Prakash Dhane. The Applicant has examined himself as a Defence Witness and on oath he has stated that the documents at exh.45,50,53 and 57 did not bear his signatures and also denied the signatures on exh.59 and 60.

13. As observed by the Sessions Court, the entire case is based on the proof of signatures appearing on the said four documents. It must be borne in mind that the Appellate Court has already held that the other part of the documents are not proved to be in the handwriting of the Applicant and there is no evidence to show that the Applicant has received the

amounts from the Cashier.

14. At this stage it will be necessary to refer to the decisions relied upon by the learned Counsel for the Applicant. He relied upon the decision of the Apex Court reported in A.I.R. 1979 S.C. page 14 [State (Delhi Administration) vs. Pali Ram]. The ratio of the said decision can be found in paragraph 29. In paragraph 29 the Apex Court has observed thus :

"....**Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself**. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert." (Emphasis supplied)

15. In a decision reported in (1996) 2 S.C.C.page 704 (O.

Bharathan vs. K. Sudhakaran and another) the Apex Court had an occasion to consider the scope of Section 73 of the Indian Evidence Act. The Apex Court quoted with approval its earlier decision in the case of State Delhi Administration (supra) and another decision reported in A.I.R. 1967 S.C. page 1326 (Fakruddin Vs. State of M.P.).

16. The decision of the Division Bench of this Court reported in 1973 Mh.L.J. page 511 (Ramkrishna Ganpat Futane and others vs. Mohammad Kasam and others) has also some relevance. In paragraph 5 of the said decision the Division Bench held thus:

"5...But that apart, in our view, **though it is permissible for a Court under Section 73 of the Evidence Act to compare signatures, a comparison of handwriting as a mode of proof is very hazardous and inconclusive, specially when it is made by one not conversant with the subject and without such guidance as might be derived from the evidence of experts. A Judge should not, therefore, decide the question whether the disputed signature agreed with the other signatures of a certain person merely on his own inspection without the assistance of expert evidence.** (See also Azmat Ullah Khan vs. Shiam Lal). By such a comparison of signatures, the document cannot be said to have been proved as required by section 67 of the Evidence Act." (Emphasis supplied)

17. Coming back to the case in hand, the Appellate Court has held in paragraph No.11 thus :

"11..One does not know whether really the rest of the contents of Exh.45 including signature of Vasant Bapu Dhane is in the handwriting of the accused or not. Because the Investigating officer P.S.I. Jadhav has not taken any efforts to collect specimen hand writing of the accused so as to send it to the hand writing expert for the purpose of comparison. The contents of Exh.45 were not written by the accused in presence of any bank official and therefore, it is very hard to digest that these are the contents in his handwriting. But all these same the signature the signature made on Exh.45 as Assistant Accountant one can surely say that it is the signature of the accused though he might have denied it. There are so many signatures of the accused on record and at a glance one can say it is his signature and it cannot be the signature of anybody else. It was tried to show from the defence that this signature of the accused also ought to have been sent to the handwriting expert along with specimen signature as no such efforts are made the signature on Exh.45 cannot be said to be belonging to him. It is true that opinion of the handwriting

expert would have been additional piece of evidence but absence of such opinion is not the deficiency in the prosecution case. Because on the test of preponderance of probability also one can properly conclude that it is the signature of the accused and accused alone."

18. The same reasons are adopted by the Appellate Court for coming to the conclusion that signatures appearing on Exh.50,53 and 57 are that of the Applicant. It is pertinent to note here that the Appellate Court in its entire Judgment has not at all mentioned as to which signatures of the Applicant on record of the case were treated as his admitted signatures. All that the Appellate Court has said is that there are many signatures of the Applicant on record and at a glance one can say that the signatures on the disputed documents are the his signatures. Section 73 can be invoked by comparing the admitted signatures with the disputed signatures. No doubt the trial court has referred to the signatures of the Applicant on the muster role as the admitted signatures. However, the Appellate Court has not at all referred to any specific signature as an admitted signature. The evidence of the complainant may not be sufficient to come to the conclusion that the signatures are proved in accordance with Section 67 of the Evidence Act. While referring to Exh.45, the P.W.No.1-complainant stated that the signature appears to be in the hand writing of the Applicant. No doubt,

he has stated that the Applicant has signed the said document as a Clerk. It is pertinent to note here that the Applicant stepped into witness box as a Defence Witness and clearly denied the signatures on documents at exh.45,50,53 and 57. As the Applicant had denied the signatures on oath, the question which arises is whether it is safe to invoke Section 73 of the Evidence Act for the purpose of proof of the signatures on the disputed documents. The Appellate Court held that save and except the signatures of the applicant, no other part on the four documents is established to be in the handwriting of the Applicant. Even going by the Judgments of the Courts below, the said four documents form sheet-anchor of the prosecution case and the finding of guilt is based upon the only finding that the signatures on the said documents are proved to be in the handwriting of the Applicant. As held by the Apex court, as a matter of prudence and caution, the Courts below ought to have obtained the opinion and assistance of hand writing expert to record the finding regarding the identity of the handwriting, in the light of the fact that the Applicant had denied on oath that the disputed documents are in his handwriting. The Cashier who has actually disbursed the money on the basis of the said four documents has not been examined and the Appellate Court itself has held that the evidence of Raghunath is on the par with an evidence of an accomplice. Even going by the findings of the Appellate Court as it is, in my view, there is a clear error of law committed by the Appellate Court as well as by the Trial Court in coming to the

conclusion that the alleged signatures of the Applicant on the documents at Exh.45,50,53 and 57 are proved to be of the Applicant. Once it is held that the signatures on the said documents are not proved to be in the handwriting of the Applicant, the entire foundation of the prosecution case goes especially in the light of the fact that the Appellate Court has held that other part of the said four documents is not proved to be in the handwriting of the Applicant. Thus, in my view, a manifest illegality has been committed by the Courts below. Hence, Revision must succeed.

19. Hence I pass the following order :

. Rule is made absolute in terms of prayer clause (b). Bail Bonds of the Applicant are cancelled.

JUDGE